

- 
- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies
- 

## *Minute Action*

### AGENDA ITEM: 1

**Date:** March 11, 2009

**Subject:** Information Relative to Possible Conflict of Interest

**Recommendation\*:** Note agenda items and contractors/subcontractors which may require member abstentions due to possible conflicts of interest.

**Background:** In accordance with California Government Code 84308, members of the Board may not participate in any action concerning a contract where they have received a campaign contribution of more than \$250 in the prior twelve months from an entity or individual. This agenda contains recommendations for action relative to the following contractors:

Item No.	Contract No.	Contractor/Agents	Subcontractors
4	06-015-1	PFM Asset Management <i>Nancy Jones</i>	N/A
5	07-011-1	Montague, DeRose & Assoc. <i>Douglas Montague</i>	N/A

**Financial Impact:** This item has no direct impact on the budget.

**Reviewed By:** This item is prepared monthly for review by the Board of Directors and Policy Committee members.

\*

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*Approved  
Administrative Committee*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

# ADMINISTRATIVE COMMITTEE ATTENDANCE RECORD – 2009

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>Paul Biane</b> Board of Supervisors	X	X										
<b>Patrick Morris</b> City of San Bernardino	X	X										
<b>Mike Leonard</b> City of Hesperia	X	X										
<b>Bea Cortes</b> City of Grand Terrace	X											
<b>Patricia Gilbreath</b> City of Redlands		X										
<b>Paul Eaton</b> City of Montclair	X	X										
<b>Josie Gonzales</b> Board of Supervisors												
<b>Brad Mitzelfelt</b> Board of Supervisors	X											
<b>Gary Ovitt</b> Board of Supervisors		X										
<b>Dennis Yates</b> City of Chino	X	X										
<b>Gwenn Norton-Perry</b> City of Chino Hills	X	X										
<b>Rick Roelle</b> Town of Apple Valley		X										

X = Member attended meeting.

Empty box = Member did not attend meeting

Crossed out box = Not a member at the time.

# ADMINISTRATIVE COMMITTEE ATTENDANCE RECORD - 2008

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>Paul Biane</b> Board of Supervisors	X	X	X		X	X	X	X	X			
<b>Robert Christman</b> City of Loma Linda	X	X	X	X	X							
<b>Patrick Morris</b> City of San Bernardino												
<b>Mike Leonard</b> City of Hesperia	X	X	X	X	X	X		X	X	X	X	
<b>Bea Cortes</b> City of Grand Terrace	X	X		X	X	X		X	X	X	X	
<b>Lawrence Dale</b> City of Barstow	X	X	X	X	X	X	X	X	X	X		
<b>Paul Eaton</b> City of Montclair	X	X		X	X	X	X	X	X	X	X	
<b>Josie Gonzales</b> Board of Supervisors			X	X	X	X						
<b>Dennis Hansberger</b> Board of Supervisors	X	X	X			X						
<b>Brad Mitzelfelt</b> Board of Supervisors	X	X		X		X		X	X		X	
<b>Gary Ovitt</b> Board of Supervisors	X	X		X	X	X	X	X	X			
<b>Dennis Yates</b> City of Chino							X	X	X	X	X	
<b>Gwenn Norton-Perry</b> City of Chino Hills					X				X			
<b>Rick Roelle</b> Town of Apple Valley	X			X	X	X		X	X	X	X	

X = Member attended meeting. \* = Alternate member attended meeting. Empty box = Member did not attend meeting. Crossed out box = Not a member at the time.

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

AGENDA ITEM: 3

**Date:** March 11, 2009

**Subject:** Procurement Report for February 2009

**Recommendation:**\* Receive Monthly Procurement Report.

**Background:** The Board of Directors approved the Contracting and Procurement Policy (Policy No. 11000) on January 3, 1997. The Executive Director, or designee, is authorized to approve Purchase Orders up to an amount of \$50,000. All procurements for supplies and services approved by the Executive Director, or his designee, in excess of \$5,000 shall be routinely reported to the Administrative Committee and to the Board of Directors.

Attached are the purchase orders in excess of \$5,000 to be reported to the Administrative Committee for the month of February 2009.

**Financial Impact:** This item imposes no impact on the FY 2008/2009 Budget. Presentation of the monthly procurement report will demonstrate compliance with the Contracting and Procurement Policy (Policy No. 11000).

**Reviewed By:** This item is scheduled for review by the Administrative Committee on March 11, 2009.

**Responsible Staff:** William Stawarski, Chief Financial Officer

*Approved  
Administrative Committee*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

**PURCHASE ORDERS ISSUED FOR February 2009**

	Vendor	Purpose	Sole Source Y/N	Amount
P09040	Jill Kollmann & Associates	Increase PO \$12,000 for a new amount of \$32,000 for assistance with 511 development.	Yes – vendor has unique expertise in this area.	\$12,000.00
P09073	Bearcom	Increase PO \$20,000 for a new amount of \$24,500 to address the purchase of a new repeater because the old one is failing.	Yes – vendor has experience installing radio equipment in our FSP trucks as well as the repeater at the Heaps Peak location.	\$20,000.00
P09162	Southern California Association of Governments	2008/2009 CTC Membership Dues	No – Intergovernmental Agreement	\$25,000.00
P09167	California State University San Bernardino Institute of Applied Research	San Bernardino County Annual Survey Sponsorship	No – Intergovernmental Agreement	\$20,000.00
P09164	Accountemps, Inc.	Finance Temporary Services to be provided during the software implementation.	No	\$45,000.00
P09169	TH Enterprises, Inc.	Reimplementation of Local Transportation Funds and State Assistance Funds in RCMS.	No – per Contract 05-034	\$7,200.00
P09170	Coalition for America's Gateways and Trade Corridors	2008/2009 Membership Dues	No – Specialized Membership	\$5,000.00
09172	TH Enterprises, Inc.	Purchase and Installation of an HP Proliant DL380 G5 Server.	No – per Contract 05-034	\$9,421.50
P09174	Padilla & Associates, Inc.	Develop SANBAG's Anticipated Disadvantaged Business Enterprise Participation Level plan for FY2008/2009	Yes – Selection was based upon their demonstrated experience and unique qualifications.	\$8,950.00
P09175	Grand Hyatt Washington	Hotel charges for participants attending the SANBAG Advocacy Trip February 24 <sup>th</sup> -26 <sup>th</sup> , 2009	No – Hotel at the best available price.	\$7,777.38
			TOTAL PURCHASE ORDERS ISSUED	\$160,348.88

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ISF09

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

AGENDA ITEM: 4

**Date:** March 11, 2009

**Subject:** Amendment No. 1 to Contract No. 06-015 with PFM Asset Management, Inc. for Investment Advisory Services

**Recommendation:\*** Approve Amendment No. 1 to Contract No. 06-015 with PFM Asset Management, increasing the contract total amount from \$240,000 to \$368,000 and extending the period of performance to April 1, 2010.

**Background:** This action is an amendment to a current professional services contract. In March 2006, the Board approved Contract No. 06-015 with PFM Asset Management, Inc. to provide investment advisory services for the management of SANBAG's investment portfolio.

The original contract approved by the Board in March 2006 was for the amount of \$240,000. However, it was acknowledged at the time that this was an estimated contract amount. Per the contract, the monthly service fee varies based on the value of the daily net assets under management at any given time. At the start of this contract, the fees were estimated to be approximately \$6,200 per month for the 32 months this contract has been in effect; the average monthly fee has been closer to \$7,500.

Also, due to the current ongoing financial software implementation activities, there is insufficient time to prepare for the release of a new Request for Proposal (RFP) and the vendor selection process needed for investment advisory services. This

\*

*Approved*  
*Administrative Committee*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

amendment would extend the contract for an additional one year period ending April 1, 2010.

Amendment No. 1 to the investment advisory services contract to PFM Asset Management, Inc. will increase the not-to-exceed dollar amount of the contract to \$368,000 and extend the period of performance to allow for the proper preparation and implementation of the RFP/vendor selection process. The increase in the contract dollar amount is to cover the monthly service fees through the end of the new requested contract date.

***Financial Impact:*** This recommendation is consistent with the Fiscal Year 2008/2009 budget.

***Reviewed By:*** This item is scheduled for review by the Administrative Committee on March 11, 2009.

***Responsible Staff:*** William Stawarski, Chief Financial Officer

**SANBAG Contract No. 06015-1**

by and between

San Bernardino Associated Governments

and

PFM Asset Management

for

Investment Advisory Services**FOR ACCOUNTING PURPOSES ONLY**

<input checked="" type="checkbox"/> Payable	Vendor Contract # <u>06015</u>	Retention:	<input type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID <u>PFMI</u>	<input type="checkbox"/> Yes ____ % <input type="checkbox"/> No	<input checked="" type="checkbox"/> Amendment

Notes:

Original Contract: \$ <u>240,000</u>	Previous Amendments Total: \$ ____ 0
Contingency Amount: \$ ____	Previous Amendments Contingency Total: \$ ____
	Current Amendment: \$ <u>128,000</u>
	Current Amendment Contingency: \$ ____

Contingency Amount requires specific authorization by Task Manager prior to release.

**Contract TOTAL → \$ 368,000**

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
<u>942</u>	<u>5553</u>	<u>MSI Major Projects</u>	<u>I300</u>	\$ <u>128,000</u>
_____	_____	_____	_____	\$ ____
_____	_____	_____	_____	\$ ____
_____	_____	_____	_____	\$ ____

Original Board Approved Contract Date: <u>03/1/06</u>	Contract Start: <u>04/1/06</u>	Contract End: <u>04/1/09</u>
New Amend. Approval (Board) Date: _____	Amend. Start: _____	Amend. End: <u>04/1/10</u>

**If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:**

Approved Budget Authority →	Fiscal Year: <u>2009</u> \$ <u>56,000</u>	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ <u>72,000</u>
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Is this consistent with the adopted budget? ☒ Yes ☐ NoIf yes, which Task includes budget authority? 942If no, has the budget amendment been submitted? ☐ Yes ☐ No**CONTRACT MANAGEMENT**

Please mark an "X" next to all that apply:

☐ Intergovernmental ☐ Private ☐ Non-Local ☐ Local ☐ Partly LocalDisadvantaged Business Enterprise: ☒ No ☐ Yes \_\_\_\_ %Task Manager: **William Stawarski**Contract Manager: **William Stawarski**

Task Manager Signature

Date

Contract Manager Signature

Date

Chief Financial Officer Signature

Date

Filename:



**AMENDMENT NO. 1**  
**CONTRACT NO. 06-015**  
**AGREEMENT BETWEEN**  
**SAN BERNARDINO ASSOCIATED GOVERNMENTS**  
**AND**  
**PFM ASSET MANAGEMENT, LLC**

This AMENDMENT No. 1 to SANBAG Contract No. 06-015 entered into as of the first day of April in the year of 2009, by and between SAN BERNARDINO ASSOCIATED GOVERNMENTS, a California public agency (hereinafter "SANBAG"), and PFM ASSET MANAGEMENT, LLC, a Delaware limited liability company with an office in San Francisco, California (hereinafter "PFM" or the "Investment Advisor").

**WITNESSETH**

**WHEREAS**, SANBAG under Contract 06-015 desires to avail itself of the experience, sources of information, advice, assistance and facilities available to PFM; to have PFM undertake certain duties and responsibilities; and to perform certain services as investment advisor on behalf of SANBAG, as provided herein; and

**WHEREAS**, the PARTIES desire to amend the aforesaid contract to extend the period of performance and to increase the total contract amount;

**NOW THEREFORE**, the parties hereto do mutually agree to amend Contract No. 06-015 as follows:

1. The period of performance for Contract No. 06-015 shall be amended to extend the duration of Contract 06-015 to April 1, 2010.
2. The not-to-exceed cost of Contract No. 06-015 shall be increased by \$128,000, for a not-to exceed total contract amount of \$368,000.

3. Except as amended by this amendment, all other provisions of Contract No. 06-015 shall remain in full force and effect.

**IN WITNESS THEREOF**, the parties hereto have caused this Amendment to be executed by their authorized representatives as of the date set forth in the first paragraph of this Amendment.

**SAN BERNARDINO  
ASSOCIATED GOVERNMENTS**

**PFM ASSET MANAGEMENT, LLC**

By: \_\_\_\_\_  
Gary C. Ovitt, President  
SANBAG Board of Directors

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

Approved by Chief Compliance Officer

\_\_\_\_\_  
Jean-Rene Basle  
SANBAG Counsel

\_\_\_\_\_

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

### *Minute Action*

AGENDA ITEM: 5

**Date:** March 11, 2009

**Subject:** Amendment No. 1 to Contract No. 07-011 with Montague, DeRose and Associates, LLC for Financial Advisory Services

**Recommendation:** Approve Amendment No. 1 to Contract No. 07-011 with Montague, DeRose and Associates, LLC, increasing the contract total amount from \$150,000 to \$350,000 and extending the period of performance to July 5, 2011.

**Background:** This action is an amendment to a current professional services contract. In July 2006, the Board approved Contract No. 07-011 with Montague, DeRose and Associates, LLC to provide financial advisory services for SANBAG in managing its short and long-term financial needs.

The original contract approved by the Board in July 2006 was for the amount of \$150,000. At the time, future financing needs were not known. As the effects of the economic downturn have become more evident, the need for financial advisory services has grown to include evaluating immediate financing options, as well as monitoring and adjusting the agency strategic plan as it relates to the new Measure I program revenue forecast.

Amendment No. 1 to the financial advisory services contract with Montague, DeRose and Associates, LLC will increase the dollar amount of the contract to \$350,000 and extend the period of performance for an additional two years. This will allow the financing team to remain in place during the first years of the new

*Approved*  
*Administrative Committee*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

Measure I Program and allow the agency to address its current short and long-term financial needs.

***Financial Impact:*** This recommendation is consistent with the Fiscal Year 2008/2009 budget.

***Reviewed By:*** This item is scheduled for review by the Administrative Committee on March 11, 2009.

***Responsible Staff:*** William Stawarski, Chief Financial Officer

**SANBAG Contract No. 07-011-1**

by and between

San Bernardino Associated Governments

and

Montague DeRose and Associates, LLC

for

Financial Advisor Services**FOR ACCOUNTING PURPOSES ONLY**

<input checked="" type="checkbox"/> Payable	Vendor Contract # _____	Retention:	<input type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID _____	<input type="checkbox"/> Yes _____ % <input type="checkbox"/> No	<input type="checkbox"/> Amendment

Notes:

Original Contract: \$ <u>150,000</u>	Previous Amendments Total: \$ _____
Contingency Amount: \$ _____	Previous Amendments Contingency Total: \$ _____
	Current Amendment: \$ <u>200,000</u>
	Current Amendment Contingency: \$ _____

Contingency Amount requires specific authorization by Task Manager prior to release.

**Contract TOTAL → \$ 350,000**

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
<u>942</u>	<u>5553</u>	<u>MSI Major Projects</u>	<u>I300</u>	<u>\$ 200,000</u>
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

Original Board Approved Contract Date: <u>7/5/06</u>	Contract Start: <u>7/5/06</u>	Contract End: <u>7/5/09</u>
New Amend. Approval (Board) Date: _____	Amend. Start: _____	Amend. End: <u>7/5/11</u>

**If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:**

<b>Approved Budget Authority →</b>	Fiscal Year: <u>08/09</u> \$ <u>100,000</u>	<b>Future Fiscal Year(s) – Unbudgeted Obligation →</b>	\$ <u>100,000</u>
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Is this consistent with the adopted budget? ☒ Yes ☐ NoIf yes, which Task includes budget authority? 942If no, has the budget amendment been submitted? ☐ Yes ☐ No**CONTRACT MANAGEMENT****Please mark an "X" next to all that apply:**☐ Intergovernmental ☒ Private ☒ Non-Local ☐ Local ☐ Partly LocalDisadvantaged Business Enterprise: ☐ No ☐ Yes \_\_\_\_\_ %Task Manager: **William Stawarski**Contract Manager: **William Stawarski**

Task Manager Signature

Date

Contract Manager Signature

Date

Chief Financial Officer Signature

Date

Filename:

**AMENDMENT NO. 1**  
**CONTRACT NO. 07-011**  
**AGREEMENT BETWEEN**  
**SAN BERNARDINO ASSOCIATED GOVERNMENTS**  
**AND**  
**MONTAGUE, DEROSE & ASSOCIATES, LLC.**

This AMENDMENT No. 1 to SANBAG Contract No. 07-011 entered into as of the first day of April in the year of 2009, by and between SAN BERNARDINO ASSOCIATED GOVERNMENTS, a California public agency (hereinafter "SANBAG"), and MONTAGUE, DEROSE, & ASSOCIATES, LLC., (hereinafter "CONTRACTOR" or the "Financial Advisor").

**WITNESSETH**

**WHEREAS**, SANBAG under Contract 07-011 desires to avail itself of the experience, sources of information, advice, assistance and facilities available to CONTRACTOR; to have CONTRACTOR undertake certain duties and responsibilities; and to perform certain services as financial advisor on behalf of SANBAG, as provided herein; and

**WHEREAS**, the PARTIES desire to amend the aforesaid contract to extend the period of performance and to increase the total contract amount;

**NOW THEREFORE**, the parties hereto do mutually agree to amend Contract No. 07-011 as follows:

1. The period of performance for Contract No. 07-011 shall be amended to extend the duration of Contract 07-011 to July 5, 2011.
2. The cost of Contract No. 07-011 shall be increased by \$200,000, for a total contract amount of \$350,000.

3. Except as amended by this amendment, all other provisions of Contract No. 07-011 shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have caused this Amendment to be executed by their authorized representatives as of the date set forth in the first paragraph of this Amendment.

**SAN BERNARDINO  
ASSOCIATED GOVERNMENTS**

By: \_\_\_\_\_  
Gary C. Ovitt, President  
SANBAG Board of Directors

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Jean-Rene Basle  
SANBAG Counsel

**MONTAGUE DEROSE &  
ASSOCIATES, LLC**

By: \_\_\_\_\_  
Douglas Montague  
President

Date: \_\_\_\_\_

***Minute Action***

AGENDA ITEM: 6

**Date:** March 11, 2009

**Subject:** SANBAG Contract No. R09181 for Southern California Association of Governments (SCAG) Lease of Office Space at the Santa Fe Depot

**Recommendation:\*** Approve Contract No. R09181 for the two year lease with Southern California Association of Governments (SCAG) for office space at the San Bernardino Santa Fe Depot.

**Background:** SCAG approached SANBAG about the possibility of leasing space at the Santa Fe Depot for a regional office. Approximately 1,800 square feet of improved space became available when the San Bernardino Police Department moved out of their offices on the first floor. The proposal is to lease this space to SCAG. Having SCAG offices located in the same building as SANBAG will be beneficial to the agencies that we both serve and to each other.

The terms of the lease are generally:

1. Term - two years with two options for one year each.
2. Base rent - \$.75 per square foot for the first year with an increase to \$.77 per square foot in the second year and \$.80 per square foot in the third year.
3. Common Area Maintenance- SCAG will pay 4.1 % of the total estimated common area expenses reconciled to actual expenses annually. Common area expenses include general maintenance, maintenance of landscaping and parking lot, utilities to the common area, and security. It is estimated that the common area maintenance cost will be \$939 per month in the first year.
4. Parking - nine reserved parking spaces.

\*

*Approved  
Administrative Committee*

*Date:* \_\_\_\_\_

*Moved:* \_\_\_\_\_ *Second:* \_\_\_\_\_

*In Favor:* \_\_\_\_\_ *Opposed:* \_\_\_\_\_ *Abstained:* \_\_\_\_\_

*Witnessed:* \_\_\_\_\_

ADM0903a-DAB  
Attachment:  
R09181  
80509000



Administrative Committee Agenda Item

March 11, 2009

Page 2

***Financial Impact:*** This item is consistent with the SANBAG Fiscal Year 2008/2009 budget. All revenue collected under this lease will be retained by the depot property management firm hired by SANBAG. The annual lease revenue of \$16,200 will be deposited with other lease revenue received from leasing space at the depot, if any, and used to offset expenses incurred related to the property management of the depot. The \$11,268 for common area maintenance will be applied against the depot common area expenses.

***Reviewed By:*** This item is scheduled for review by the Administrative Committee on March 11, 2009.

***Responsible Staff:*** Duane A. Baker, Director of Management Services

**SANBAG Contract No. R09181**

by and between

San Bernardino Associated Governments

and

Southern California Association of Governments (SCAG)

for

Depot Lease with Southern California Association of Governments (SCAG)**FOR ACCOUNTING PURPOSES ONLY**

<input type="checkbox"/> Payable	Vendor Contract # _____	Retention:	<input checked="" type="checkbox"/> Original
<input checked="" type="checkbox"/> Receivable	Vendor ID <u>SCAG</u>	<input type="checkbox"/> Yes _____ % <input checked="" type="checkbox"/> No	<input type="checkbox"/> Amendment

Notes:

Original Contract:	\$ .75 for 1 <sup>st</sup> Yr.	Previous Amendments Total:	\$ _____
	\$ .77 for 2 <sup>nd</sup> Yr.	Previous Amendments Contingency Total:	\$ _____
	\$ .80 for 3 <sup>rd</sup> Yr.		
	4.1% of CAM		
Contingency Amount:	\$ _____	Current Amendment:	\$ _____
		Current Amendment Contingency:	\$ _____

Contingency Amount requires specific authorization by Task Manager prior to release.

**Contract TOTAL → \$ 50,112.00**

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

Original Board Approved Contract Date: 4/1/09      Contract Start: 3/1/09      Contract End: 2/28/11  
 New Amend. Approval (Board) Date: \_\_\_\_\_      Amend. Start: \_\_\_\_\_      Amend. End: \_\_\_\_\_

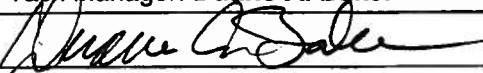
**If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:**

Approved Budget Authority →	Fiscal Year: _____ \$ _____	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ _____
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Is this consistent with the adopted budget? ☒ Yes ☐ No

If yes, which Task includes budget authority? \_\_\_\_\_

If no, has the budget amendment been submitted? ☐ Yes ☐ No**CONTRACT MANAGEMENT****Please mark an "X" next to all that apply:**X Intergovernmental    ☐ Private    ☐ Non-Local    ☐ Local    ☐ Partly LocalDisadvantaged Business Enterprise: ☐ No    ☐ Yes \_\_\_\_\_ %Task Manager: **Duane A. Baker**Contract Manager: **Duane A. Baker**

 3.5.09  
 Task Manager Signature      Date

 3.5.09  
 Contract Manager Signature      Date

Chief Financial Officer Signature      Date

Filename: R09181-DAB.doc

Form 28 06/06

**SAN BERNARDINO SANTA FE DEPOT**

**COMMERCIAL LEASE**

**Landlord:**

**San Bernardino Associated Governments, a California joint powers agency  
(SANBAG)**

**Tenant:**

**Southern California Association of Governments  
(SCAG)**

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## 1. Summary of Lease Provisions

1.01 **Parties:** This Lease, dated, for reference purposes only, February 24, 2009, is made by and between San Bernardino Associated Governments, a California joint powers agency (SANBAG) (herein called "Landlord") and Southern California Association of Governments (SCAG) (herein called "Tenant").

1.02 **Premises:** Unit Number(s) 140, consisting of 1,800 rentable square feet, more or less, as defined in Section 2 (the "Premises").

1.03 **Building:** Commonly described as being located at 1170 West 3rd Street in the City of San Bernardino, County of San Bernardino, State of California.

1.04 **Term:** Two (2) years, commencing March 1, 2009 ("Commencement Date") and ending February 28, 2011, as defined in Section 5.

1.05 **Base Rent:** \$.75 per rentable square foot of Premises per month, payable on the first calendar day of each month, per Section 6.

1.06 **Base Rent Increase:** Annually, the monthly Base Rent payable under Section 1.05 shall be adjusted as provided in Section 7.

1.07 **Late Charges:** 6% if any installment of Base Rent, Operating Expense Increase, or any other sum due from Tenant shall not be received by Landlord within five (5) business days after the first day of each month.

1.08 **Security Deposit:** \$0.00.

1.09 **Tenant's Share of Common Area Operating Expenses:** 4.1% as defined in Section 6.

1.10 **Parking:** Any available unreserved and unassigned vehicle parking spaces for Tenant's visitors (who shall not utilize any spaces reserved for other occupants of the Depot), and nine (9) reserved parking spaces for Tenant's employees, as provided for in Section 4.

1.11 **Use:** SCAG Regional Office.

1.12 **Utilities:** Provided by Landlord (subject to reimbursement as may be provided for in this Lease): Water/Sewer/Gas/Trash Provided by Tenant: Electricity/Phone/Data, as further defined and subject to the provisions in Section 11.

1.13 **Maintenance & Repairs:** Interior of Premises maintained by Tenant; Exterior of Building maintained by Landlord subject to and in accordance with Section 10.

1.14 **Insurance:** \$1,000,000 liability policy required to be carried by Tenant prior to Occupancy - see Section 13.

1.15 **Options to Extend:** Tenant has two (2) Options to Extend the term of this Lease for a period of one (1) year each, as provided for in Section 25.

1.16 **Tenant Improvements:** (check one)

☒ Tenant to accept Premises in as-is condition.

☐ Landlord to provide Tenant Improvements as provided for in Paragraph \_\_\_\_.

☐ Tenant to provide Tenant Improvements as provided for in Paragraph \_\_\_\_.

1.17 **Notices:**

To Landlord:

San Bernardino Associated Governments,  
a California joint powers agency (SANBAG)  
c/o City Commercial Management  
10722 Arrow Route - Suite 500  
Post Office Box 548  
Rancho Cucamonga, CA 91729-0548  
Telephone: (909) 948-1662  
FAX: (909) 948-1349

To Tenant:

Southern California  
Association of Governments  
Attn: Wayne Morre, CFO  
818 West Seventh Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90017-3436

(213) 236-1800  
(213) 236-1825 fax

## 2. Premises.

Landlord hereby leases to Tenant for the term, at the rental, and upon all of the conditions set forth herein, the Premises as defined in Section 1.02. The Premises, the Building(s), the Common Areas, and the land upon which the same are located, are collectively referred to as the "Depot" (as per the attached Site Plan). It is understood and agreed that the square footage figures set forth in the Basic Lease Provisions are approximations which Landlord and Tenant agree are reasonable and shall not be subject to revision except in connection with an actual change in the size of the Premises.

Tenant hereby accepts the Premises and the Depot in their condition existing as of the Lease Commencement Date or the date that Tenant takes possession of the Premises, whichever is earlier, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any easements, covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that it has satisfied by its own independent investigation that the Premises are suitable for its intended use, and that neither Landlord nor Landlord's agent or agents has made any representation or warranty as to the present or future suitability of the Premises, Common Areas, or Depot for the conduct of Tenant's business.

## 3. Common Areas.

"Common Areas" are defined as all areas outside the confines of the Premises, including but not limited to parking areas, loading and unloading zones, trash enclosures, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas, and that are within the Depot that are provided and designated for the

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general non-exclusive use of Landlord, Tenant, and all other Tenants of the Depot. Tenant, Tenant's employees, visitors, and invitees hereby agree to abide by and conform to all rules and regulations, which Landlord shall have the right in its sole reasonable discretion to modify from time to time. Landlord shall have the exclusive control and management of the Common Areas; however, Landlord shall not be responsible for the non-compliance of said rules and regulations by other tenants, employees, and invitees to the Depot. Landlord shall have the right in its sole discretion to (1) make changes to the Building exterior and/or Common Areas; (2) close temporarily any of the Common Areas for maintenance purposes so long as reasonable access remains available; and (3) to add additional improvements to the Common Areas. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Landlord or Landlord's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Landlord shall have the right, without notice, in addition to such other rights and remedies it may have, to remove the property and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

#### 4. Parking.

Tenant shall be entitled to use the vehicle parking spaces as provided for in Section 1.10 on those portions of the Common Areas designated by Landlord for parking. Tenant shall not use more spaces than said maximum number, and spaces shall be used only for vehicles no larger than full-sized passenger vehicles, pickup trucks, or sport utility vehicles. Any vehicle loading or unloading shall only be permitted in areas and at times designated by Landlord for such activities. Landlord shall have the right, without notice, to tow any of Tenant's vehicles (or Tenant's employees, invitees, contractors, or visitors) that are in violation of any parking rules and regulations, the cost of which shall be the sole responsibility of Tenant.

#### 5. Term.

"Possession" of the Premises shall be deemed tendered to Tenant when (1) improvements, if any, are substantially completed, and (2) Tenant has been given reasonable access to the Premises, including delivery by Landlord of keys to the Premises. If for any reason Landlord cannot deliver possession of the Premises on the Commencement Date as provided for in Section 1.04, the Commencement Date and ending dates shall be correspondingly extended in relation to the Term of this Lease, and Landlord shall not be subject to any liability, nor shall such delay in commencement affect the validity of this Lease or the obligations of Tenant hereunder (except that Tenant shall not be obligated to pay rent until possession of the Premises has been delivered as provided for herein). However, there shall be no abatement of rent or adjustment of the Commencement Date if such delays are caused by actions of Tenant, Tenant's agents or contractors.

#### 6. Rent.

**Rent and Base Rent.** Any and all amounts from time to time payable to Landlord by Tenant hereunder shall be referred to herein as Rent, including, but not limited to, Base Rent, and shall be paid in full when due without right of offset, setoff or deduction. Tenant shall pay to Landlord the Base Rent for the Premises as provided of in Section 1.05. Base Rent for any period less than one month shall be prorated based upon the actual number of days in the calendar month involved. Rent shall be payable in lawful money of the United States to Landlord at the address stated herein or to any such other persons or at any such other places as Landlord may designate in writing.

**Common Area Maintenance Expenses ("CAM").** Tenant shall pay to Landlord during the term hereof, in addition to the Base Rent, Tenant's Share as provided for in Section 1.09 and hereinafter defined, of all Common Area Maintenance Expenses, as herein defined, during each calendar year, also referred to as "CAM Charges", in accordance with the following provisions:

- (a) "Common Area Maintenance Expenses" are defined, for purposes of this Lease, as all costs incurred by Landlord, relating to the ownership and operation of the Depot, including, but not limited to, the following:
  - (i) The operation, repair and maintenance, in neat, clean, good order and condition, of the following:
    - (aa) The Common Areas, including parking areas, loading and unloading areas, trash areas, public restrooms, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, escalators, and roof;
    - (bb) Exterior signs and any tenant directories.
    - (cc) Fire detection (including monitoring costs) and sprinkler systems.
  - (ii) The cost of water, gas, electricity, and telephone to service the Common Areas.
  - (iii) Trash disposal, property management, security services, association fees, and the costs of any environmental inspections.
  - (iv) Reserves set aside for maintenance and repair of Common Areas.
  - (v) Real Property Taxes (as defined in Section 14) for the Building and the Common Areas.
  - (vi) The cost of the premiums for the insurance policies maintained by Landlord under Section 13.
  - (vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.
  - (viii) Any other services to be provided by Landlord that are stated elsewhere in this Lease to be a Common Area Maintenance Expense.
- (ix) Any management fees incurred by Landlord in connection with the operation of the Depot or, at Landlord's option, in lieu of any such management fees, 15% of CAM Charges as computed without regard to this clause (ix).

(b) Any Common Area Maintenance Expenses and Real Property Taxes that are specifically attributable to the Building or to any other building in the Depot or to the operation, repair, and maintenance thereof, shall be allocated entirely to the building or to such other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair, and maintenance thereof, shall be equitably allocated by Landlord to all buildings in the Depot.

(c) The inclusion of the improvements, facilities, and services set forth in this Section shall not be deemed to impose an obligation upon Landlord to either have said improvements or facilities or to provide those services unless the Depot already has the same or Landlord already provides the services.

(d) Tenant's Share of Common Area Operating Expenses (CAM Charges) shall be payable by Tenant within ten (10) days after a reasonably detailed statement of actual expenses is presented to Tenant by Landlord's agent. At Landlord's option, however, an amount may be estimated by Landlord from time to time of Tenant's Share of annual CAM Charges and the same shall be payable monthly or quarterly, as Landlord shall designate, during each 12-month period of the Lease term, on the same day as the Base Rent is due hereunder. Landlord shall deliver to Tenant within sixty (60) days after the expiration of each calendar year a reasonably detailed statement showing Tenant's Share of the actual CAM Charges incurred during the preceding year (the "Reconciliation"). If Tenant's payments during said preceding year exceed Tenant's Share as indicated on said Reconciliation, Landlord shall be credited the amount of such overpayment against Tenant's Share of CAM Charges next becoming due. If Tenant's payments during said preceding year were less

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than Tenant's Share as indicated on said Reconciliation, Tenant shall pay to Landlord the amount of the deficiency within ten (10) days after delivery by Landlord to Tenant of said Reconciliation.

## 7. Rent Increase.

On each anniversary date of this Lease, the Base Rent shall be increased by ☐ CPI Adjustment (see subsection "A" below) or ☒ fixed rental adjustment (see subsection "B" below).

**A. CPI Rental Adjustment ("CPI"):** At the times set forth in paragraph 1.06 of the Basic Lease Provisions, the monthly Base Rent shall be adjusted by the increase, if any, in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor for All Urban Consumers, (1982-84=100), "All Items", for the City nearest the location of the Building, herein referred to as "CPI", since the date of this Lease. The monthly Base Rent shall be calculated as follows: the Base Rent payable for the first month of the term of this Lease shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month during which the adjustment is to take effect, and the denominator of which shall be the CPI for the calendar month in which the original Lease term commences. The sum so calculated shall constitute the new monthly Base Rent hereunder, but, in no event, shall such new monthly Base Rent be less than the Base Rent payable for the month immediately preceding the date for the rent adjustment. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculations. Tenant shall continue to pay the rent at the rate previously in effect until the increase, if any, is determined. Within ten (10) days following the date on which the increase is determined, Tenant shall make such payment to Landlord as will bring the increased rental current. Thereafter the rental shall be paid at the increased rate.

**B. Fixed Rental Adjustment ("FRA"):** The Base Rent shall be adjusted by increasing the monthly Base Rent by three percent (3%) each year over the rent for the preceding term.

Months	Monthly Base Rent
1 - 12	\$.75 per rentable square foot
13 - 24	\$.77 per rentable square foot
25 - 36	\$.80 per rentable square foot

## 8. Security Deposit

~~Tenant shall deposit with Landlord upon execution hereof the Security Deposit set forth in paragraph 1.08 of the Basic Lease Provisions as security for Tenant's faithful performance of Tenant's obligations hereunder. If Tenant fails to pay rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, Landlord may use, apply or retain all or any portion of said deposit for the payment of any rent or other charge in default or for the payment of any other sum to which Landlord may become obligated by reason of Tenant's default, or to compensate Landlord for any loss or damage which Landlord may suffer thereby. If Landlord so uses or applies all or any portion of said deposit, Tenant shall within ten (10) days after written demand therefor deposit cash with Landlord in an amount sufficient to restore said deposit to the full amount then required of Tenant. If the monthly rent shall, from time to time, increase during the term of this Lease, Tenant shall, at the time of such increase, at Landlord's option, deposit with Landlord additional money as a security deposit so that the total amount of the security deposit held by Landlord shall at all times bear the same proportion to the then current Base Rent as the initial security deposit bears to the initial Base Rent. If Tenant performs all of Tenant's obligations hereunder, said deposit, or so much thereof as has not heretofore been applied by Landlord, shall be returned, without payment of interest or other increment for its use, to Tenant (or, at Landlord's option, to the last assignee, if any, of Tenant's interest hereunder) at the expiration of the term hereof, and after Tenant has vacated the Premises and delivered possession to Landlord. No trust relationship is created herein between Landlord and Tenant with respect to said Security Deposit. Landlord shall not be required to segregate such deposit from other Landlord moneys and shall not be required to pay any interest thereon.~~

## 9. Use.

The Premises shall be used and occupied only for the purpose as provided for in Section 1.11 and for no other purpose. Tenant shall conduct its business in a lawful manner (including obtaining and maintaining any required governmental permits and licenses) and shall not use or permit use of the Premises or the Common Areas in any manner that will tend to create waste or a nuisance or shall tend to disturb other occupants of the Depot.

## 10. Maintenance and Repairs.

**Landlord's Obligations:** Landlord shall keep the Depot foundations, exterior walls, roof, fire sprinkler system and fire/smoke detection equipment, and common areas (as defined above), in good condition and repair; provided, however, Landlord shall not be obligated to paint exterior walls, or to repair or replace any windows, doors, or plate glass of the Premises. There shall be no abatement of rent or liability of Tenant on account of any injury or interference with Tenant's business with respect to any improvements, alterations, or repairs made by Landlord to the Depot or any part thereof.

**Tenant's Obligations:** Tenant shall, at Tenant's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition, and repair (whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements, or the age of such portion of the Premises), including, without limiting the generality of the foregoing, all equipment or facilities specifically serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights, but excluding any items which are the responsibility of Landlord. Tenant, in keeping the Premises in good order, condition, and repair, shall exercise and perform good maintenance practices. Tenant's obligations shall include restorations, replacements, or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition, and state of repair. Tenant shall also, at Tenant's sole cost and expense, procure and maintain a contract, with copies to Landlord, in customary form and substance for and with a contractor specializing and experienced in the inspection, maintenance, and service of the heating, air

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conditioning, and ventilation system for the Premises. However, Landlord reserves the right to procure and maintain the contract for the heating, air conditioning, and ventilation systems, and if Landlord so elects, Tenant shall reimburse Landlord, upon demand, for the cost thereof.

If Tenant fails to perform its obligations under this Section, Landlord may enter upon the Premises after ten (10) days' prior written notice to Tenant (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Tenant's behalf, and put the Premises in good order, condition, and repair.

**Hazardous Substances.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material, or waste whose presence, nature, quantity, and/or intensity of existence, use, manufacture, disposal, transportation, spill, release, or effect, either by itself or in combination with other materials expected to be on the Premises, is either (i) potentially injurious to the public health, safety, or welfare, the environment, or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Tenant shall not engage in any activity in or about the Premises which constitutes a use of Hazardous Substances without the express written consent of Landlord and compliance in a timely matter (at Tenant's sole cost and expense) with all governmental requirements (including but not limited to compliance with all laws, rules, regulations, ordinances, directives, covenants, easements, and restrictions of record, permits, and the requirements of any applicable fire insurance underwriter or rating bureau). Landlord may (but without any obligation to do so) condition its consent, if granted, to Tenant's use of any Hazardous Substance upon Tenant's giving Landlord such additional assurances as Landlord, in its reasonable discretion, deems necessary to protect itself, the public, the Premises, and the environment against damage, contamination, or injury and/or liability therefor, including but not limited to the installation (and, at Landlord's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises and/or the deposit of an additional Security Deposit. Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

Tenant shall indemnify, protect, defend, and hold Landlord, its agents, employees, lenders, and ground Landlord, if any, and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of and involving and Hazardous Substance brought onto the Premises by or for Tenant or by anyone under Tenant's control. Tenant's obligations under this subsection shall include, but not be limited to, the effects of any contamination or injury to person, property, or the environment created or suffered by Tenant, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration, and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation, or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Landlord in writing at the time of such agreement.

## 11. Utilities & Services.

Landlord shall be responsible for the payment of the following utilities and services that serve the Premises, subject to reimbursement of same as provided for herein (check those that apply):

- ☐ Electricity
- ☒ Gas
- ☒ Water/Sewer
- ☐ Telephone & Data Service
- ☒ Trash
- ☐ Security Alarm Monitoring
- ☐ Janitorial Service & Supplies

Tenant shall be responsible for the direct payment or reimbursement to Landlord of the following utilities and services that serve the Premises (check those that apply):

- ☒ Electricity
- ☐ Gas
- ☐ Water/Sewer
- ☒ Telephone & Data Service
- ☐ Trash
- ☒ Security Alarm Monitoring
- ☒ Janitorial Service & Supplies

In the event any of Tenant's afore-mentioned utilities are not separately metered to the Premises, Tenant shall pay at Landlord's option, either Tenant's Share or a reasonable proportion to be determined by Landlord of all charges jointly metered with other Premises in the Building.

There shall be no abatement of rent and Landlord shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption, or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair, or other cause beyond Landlord's reasonable control or in cooperation with governmental request or directions.

## 12. Alterations and Additions.

Tenant shall not without Landlord's prior written consent make any alterations, improvements, additions, or repairs (hereinafter collectively referred to as "Alterations") in, on or about the Premises or the Depot. Should Landlord permit Tenant to make its own Alterations, Tenant shall use only contractors that are properly and adequately licensed and insured, and Landlord may require Tenant to provide Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure Landlord against any liability for mechanic's and materialmen's liens and to ensure completion of the work. Any Alterations in or about the Premises or the Depot that Tenant shall desire to make shall be presented to Landlord in written form, with proposed detailed plans. If Landlord shall give its consent to making such Alteration, the consent shall be deemed conditioned upon Tenant acquiring a permit to do so from the applicable governmental agencies, furnishing of a copy thereof to Landlord prior to the commencement of the work, and compliance by Tenant of all conditions of said permit in a prompt and

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expeditious manner.

Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises, the Building, or the Depot, or any interest therein. Tenant shall give Landlord not less than ten (10) days' notice prior to the commencement of any work in the Premises by Tenant, and Landlord shall have the right to post notices of non-responsibility in or on the Premises or the Building as provided by law.

All Alterations which may be made on the Premises by Tenant shall be made and done in a good and workmanlike manner and of good and sufficient quality and materials and shall be the property of Landlord and shall remain upon and be surrendered with the Premises at the expiration of the Lease term, unless Landlord requires their removal pursuant to Section 18.

### 13. Insurance and Indemnity.

**Liability and Property Insurance - Tenant:** Tenant shall provide a certificate of self insurance to Landlord of not less than \$1,000,000 per occurrence of bodily injury and property damage, or Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of Comprehensive General Liability Insurance in an amount of not less than \$1,000,000 per occurrence of bodily injury and property damage combined or in a greater amount as reasonably determined by Landlord and shall insure Tenant with Landlord as additional insured against liability arising out of the use, occupancy, or maintenance of the Premises. Compliance with the above requirement shall not, however, limit the liability of Tenant hereunder. Tenant shall also maintain insurance coverage on all of Tenant's personal property, trade fixtures, and alterations and improvements in, on, or about the Premises similar in coverage to that carried by Landlord (such insurance shall be full replacement cost coverage with a deductible not to exceed \$2,500 per occurrence, and the proceeds from any such insurance shall be used exclusively for the replacement of personal property and the restoration of trade fixtures, alterations, and improvements). Tenant shall deliver to Landlord certificates evidencing the existence and amounts of such insurance within seven (7) days after the Commencement Date of this Lease, and shall, at least thirty (30) days prior to the expiration of such policies, furnish Landlord with renewals thereof.

The cost of the premiums for the insurance policies maintained by Landlord hereinafter shall be a Common Area Operating Expense.

**Liability Insurance - Landlord:** Landlord shall obtain and keep in force during the term of this Lease a policy of Combined Single Limit Bodily Injury and Broad Form Property Damage Insurance, plus coverage against such other risks Landlord deems advisable from time to time, insuring Landlord, but not Tenant, against liability arising out of the ownership, use, occupancy, or maintenance of the Depot in an amount not less than \$1,000,000 per occurrence.

**Property Insurance:** Landlord shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Depot improvements, but not Tenant's personal property, fixtures, equipment, or tenant improvements, in an amount of the full replacement cost thereof, as the same may exist from time to time, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, plate glass, and such other perils as Landlord deems advisable or may be required by a lender having a lien on the Depot. In addition, Landlord shall obtain and keep in force, during the term of this Lease, a policy of rental value insurance covering a period of one year, with loss payable to Landlord, which insurance shall also cover all Operating Expenses for said period. Tenant shall not be named in any such policies carried by Landlord and shall have no right to any proceeds therefrom. In the event that the Premises shall suffer any insured losses, the deductible amounts under the applicable insurance policies shall be deemed an Operating Expense. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies carried by Landlord. Tenant shall pay the entirety of any increase in the property insurance premium for the Depot over what it was immediately prior to the commencement of the term of this Lease if the increase is specified by Landlord's insurance carrier as being caused by the nature of Tenant's occupancy or any act or omission of Tenant.

**Waiver of Subrogation:** Tenant and Landlord each hereby release and relieve the other, and waive their entire right of recovery against the other for direct or consequential loss or damage arising out of or incident to the perils covered by property insurance carried by such party, whether due to the negligence of Landlord or Tenant or their agents, employees, contractors, and/or invitees.

**Indemnity:** Tenant shall indemnify and hold harmless Landlord and its agents, Landlord's master or ground Landlord, partners and lenders, from and against any and all claims for damage to the person or property of anyone or any entity arising from Tenant's use of the Depot, or from the conduct of Tenant's business or from any activity, work or things done, permitted or suffered by Tenant in or about the Premises or elsewhere and shall further indemnify and hold harmless Landlord from and against any and all claims, costs and expenses arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or omission of Tenant, or any of Tenant's agents, contractors, employees, or invitees, and from and against all costs, attorney's fees, expenses and liabilities incurred by Landlord as the result of any such use, conduct, activity, work, things done, permitted or suffered, breach, default, or negligence, and in dealing reasonably therewith, including but not limited to the defense or pursuit of any claim or any action or proceeding involved therein; and in case any action or proceeding be brought against Landlord by reason of any such matter. Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified.

**Exemption of Landlord from Liability:** Tenant hereby agrees the Landlord shall not be liable to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage results from conditions arising upon the Premises or upon other portions of the Depot, or from other sources or places, or from new construction or the repair, alteration, or improvement of any part of the Depot, or of the equipment, fixtures, or appurtenances applicable thereto, and regardless of whether the cause of such damage or the means or repairing the same is inaccessible. Landlord shall not be liable for any damages arising from any act or neglect of any other Tenant, occupant or user of the Depot, nor from the failure of Landlord to enforce the provisions of any other lease of any other Tenant of the Depot.

### 14. Property Taxes.

**Real Property Taxes:** Landlord shall pay real property taxes and associated assessments applicable to the Depot, subject to reimbursement as a Common Area Operating Expense by Tenant in accordance with the provisions of Sections 1.09 and 6. Tenant shall also pay to Landlord the entirety of any increase in real property

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tax if assessed solely by reason of additional improvements placed upon the Premises by Tenant or at Tenant's request. Real property taxes shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income, or estate taxes) imposed on the Depot or any portion thereof by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agriculture, sanitary, fire, street, drainage or other improvement district thereof.

**Personal Property Taxes:** Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or elsewhere.

## 15. Assignment & Subletting.

Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in the Lease or in the Premises, without Landlord's prior written consent, which Landlord shall not unreasonably withhold (however, Landlord reserves the right to condition any approval to assign or sublet upon Landlord's determination that (a) the proposed assignee or subtenant shall conduct a business on the Premises of a quality substantially equal to that of Tenant and consistent with the general character of the other occupants of the Depot and not in violation of any exclusives or rights then held by other tenants, and (b) the proposed assignee or subtenant be at least as financially responsible as Tenant was expected to be at the time of the execution of this Lease or of such assignment or subletting, whichever is greater). Regardless of Landlord's consent, no assignment or subletting shall release Tenant of Tenant's obligations hereunder or alter the primary liability of Tenant to pay the rent and other sums due Landlord hereunder including Tenant's Share of Operating Expense Increase, and to perform all other obligations to be performed by Tenant hereunder. If Tenant's obligations under this Lease have been guaranteed by third parties, then an assignment or sublease, and Landlord's consent thereto, shall not be effective unless said guarantors give their written consent to such sublease and the terms thereof. The consent by Landlord to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting by Tenant or to any subsequent or successive assignment or subletting by the subtenant. Landlord shall be a party to, and have the right to review, any proposed subleases and associated documents. If Tenant shall request the consent of Landlord for a proposed assignment or subletting, then Tenant shall pay Landlord's reasonable costs and expenses incurred in connection therewith, including attorneys', architects', engineers', or other consultants' fees.

In the event of any default under this Lease, Landlord may proceed directly against Tenant, any guarantors or anyone else responsible for the performance of this Lease, including the subtenant, without first exhausting Landlord's remedies against any other person or entity responsible therefor to Landlord, or any security held by Landlord or Tenant. The discovery of the fact that any financial statement relied upon by Landlord in giving its consent to an assignment or subletting was materially false shall, at Landlord's election, render Landlord's said consent null and void.

## 16. Default; Breach; Remedies.

**Tenant's Default/Breach:** The occurrence of any one or more of the following events shall constitute a material default of this Lease by Tenant:

(a) The breach by Tenant of any of the covenants, conditions or provisions contained within this Lease, where such breach is of an Incurable nature.

(b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, and as when due, where such failure shall continue for a period of three (3) days after written notice thereof from Landlord to Tenant. In the event that Landlord serves Tenant with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

(c) The failure of Tenant to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Tenant, where such failure is curable in nature and continues for a period of three (3) business days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's noncompliance is such that more than three (3) business days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said three (3) business day period and thereafter diligently pursues such cure to completion. Such three (3) business day notice shall constitute the sole and exclusive notice required to be given to Tenant under applicable Unlawful Detainer statutes.

(d) The discovery by Landlord that any financial statement given to Landlord by Tenant, or its successor in interest or by any guarantor of Tenant's obligation hereunder, was materially false.

**Landlord's Default/Breach:** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than three (3) business days after written notice by Tenant to Landlord; provided, however, that if the nature of Landlord's obligation is such that more than three (3) business days are required for performance then Landlord shall not be in default if Landlord commences performance within such three (3) business day period and thereafter diligently pursues the same to completion.

**Remedies:** In the event of any material default or breach of this Lease by Tenant, Landlord may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises, recapture of any inducement such as abated rent periods, reasonable attorneys' fees, and any real estate commission actually paid; the worth at the time of award of the court having jurisdiction thereof the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided; that portion of the leasing commission paid by Landlord applicable to the unexpired term of this Lease.

(b) Maintain Tenant's right to possession in which case this Lease shall continue in effect whether or not Tenant shall have vacated or abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state wherein the Premises are located. Unpaid Installments of rent and other unpaid monetary obligations of Tenant under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

**Late Charges:** Tenant hereby acknowledges that the late payment by Tenant to Landlord of Base Rent,

Initials: WJW

Tenant's Share of Operating Expense Increase or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any installment of Base Rent, Operating Expense Increase, or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five business (5) days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

#### 17. Estoppel Certificate.

Each party (as "responding party") shall at any time upon not less than ten (10) days' prior written notice from the other party ("requesting party") execute, acknowledge, and deliver to the requesting party a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to the responding party's knowledge, any uncured defaults on the part of the requesting party, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Depot or of the business of Tenant. At the requesting party's option, the failure to deliver such statement within such time shall be conclusive upon such party that (i) this Lease is in full force and effect, without modification except as may be represented by the requesting party, (ii) there are no uncured defaults in the requesting party's performance, and (iii) if Landlord is the requesting party, not more than one month's rent has been paid in advance.

#### 18. Surrender; Move-out.

On the last day of the term hereof, or on any sooner termination, Tenant shall surrender the Premises to Landlord, which shall include the return of all keys and access control devices, in the same condition as received, ordinary wear and tear excepted, clean and free of debris. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by reasonable maintenance practices by Tenant. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, alterations, furnishings and equipment, and shall leave the HVAC equipment, power panels, electrical distribution systems, lighting fixtures and lamps, window coverings, wall and floor coverings, ceilings, plumbing fixtures, and all other building systems in the Premises in good operating condition.

#### 19. Holding Over.

If Tenant, with Landlord's consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Tenant, except that the rent payable shall be 125% of the rent immediately preceding the termination date of this Lease, and all Options, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy.

#### 20. Substituted Premises:

~~Landlord reserves the right, upon not less than sixty (60) days prior written notice to Tenant, to substitute for the Premises some other premises within the Building having substantially equivalent net rentable area as the Premises, subject to a 15% variation, provided that Landlord shall pay all expenses reasonably incurred in relocating Tenant's property to such new location, and upon the expiration of such written notice, such other premises shall be substituted for the Premises for all purposes under this Lease. Landlord shall not be obligated to Tenant for any losses resulting from the substitution of Premises, and Tenant agrees to hold Landlord harmless against any such losses.~~

#### 21. Landlord's Access.

Landlord and Landlord's agents shall have the right to enter the Premises at reasonable time for the purpose of inspecting the same, performing any services required of Landlord, showing the same to prospective purchasers, lenders, or tenants, making such alterations, repairs, improvements, or additions to the Premises or to the Depot as Landlord may reasonably deem necessary or desirable and the erecting, using, and maintaining of utilities, services, pipes, and conduits through the Premises and/or other premises as long as there is no unreasonable interference with Tenant's property or business use of the Premises. Landlord may at any time place on or about the Premises or the Building any ordinary "For Sale" signs and Landlord may at any time during the last 120 days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All activities of Landlord pursuant to this paragraph shall be without abatement of rent, nor shall Landlord have any liability to Tenant for the same.

Landlord shall have the right to retain keys to the Premises and to unlock all doors in or upon the Premises other than to files, vaults, and safes, and in the case of emergency to enter the Premises by any reasonably appropriate means, and any such entry shall not be deemed a forcible or unlawful entry or detainer of the Premises or an eviction. This Section shall in no event constitute a waiver of Tenant's right to quiet enjoyment of the Premises.

#### 22. Security.

Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Depot. Tenant assumes all responsibility for the protection of Tenant, its agents, and invitees and the property of Tenant and of Tenant's agents and invitees from acts of third parties. Nothing herein contained shall prevent Landlord, at Landlord's sole option, from providing security protection for the Depot or any part thereof, in which event the cost thereof shall be included within the definition of Common Area Operating Expenses.

Tenant shall not permit anyone, except in emergency or with Landlord's prior approval, to go upon the roof of the building nor to access electrical, utility, elevator, machinery or equipment rooms.

#### 23. Signs.

Tenant shall not place any sign upon the Premises or the Depot without Landlord's prior consent. Under no circumstances shall Tenant place a sign on any roof of the Depot. Lettering on directory or monument signs, if applicable and which must be expressly approved herein, shall be provided by ☐ Landlord ☒ Tenant, and

Initials: W/M

shall conform to the Depot sign criteria. In the event Tenant is permitted signage on the Building exterior, such signage shall be subject to the Depot sign criteria and in accordance with applicable codes, requirements, and governmental approval of the City in which the Building is located. The installation, maintenance, repair, and removal (including any underlying damage caused by removal) of such exterior signage shall be provided by Tenant, at Tenant's sole cost and expense. Failure to maintain such signage shall, at Landlord's option, result in forfeiture of the sign position(s) and removal of existing signage (at Tenant's cost).

#### 24. Subordination.

This Lease, and any Option or first refusal granted hereby, at Landlord's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the Depot. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless otherwise terminated pursuant to its terms. Tenant agrees to execute any documents required to effectuate an attornment, a subordination, or to make this Lease or any Option granted herein prior to the lien of any mortgage, deed of trust, or ground lease, as the case may be. Tenant's failure to execute such documents within ten (10) days after written demand shall constitute a material default by Tenant hereunder without further notice to Tenant or, at Landlord's option, Landlord shall execute such documents on behalf of Tenant as Tenant's attorney-in-fact.

#### 25. Options.

As used in this paragraph the word "Option" has the following meaning: (1) the right or option to extend the term of this Lease or to renew this Lease; (2) the option or right of first refusal to lease the Premises or the right of first offer to lease the Premises or the right of first refusal to lease other space within the Depot or the right of first offer to lease other space within the Depot; (3) the right or option to purchase the Premises or the Depot, or the right of first refusal to purchase the Premises or the Depot, or the right of first offer to purchase the Premises or Depot.

Each Option granted to Tenant in this Lease is personal to the original Tenant and may be exercised only by the original Tenant while occupying the Premises. In the event that Tenant has multiple options to extend or renew this Lease a later option cannot be exercised unless the prior option to extend or renew this Lease has been so exercised. All rights of Tenant under the provisions of an Option shall terminate and be of no further force or effect, notwithstanding Tenant's due and timely exercise of the Option, if, during the term of this Lease, (i) Tenant fails to pay Landlord a monetary obligation of Tenant for a period of thirty (30) days after such obligation becomes due (without any necessity of Landlord to give notice thereof to Tenant), or (ii) Tenant fails to commence to cure any curable default or breach of the provisions of this Lease within thirty (30) days after the date that Landlord gives notice to Tenant of such default and/or Tenant fails thereafter to diligently prosecute said cure to completion, or (iii) Landlord gives to Tenant three or more notices of default for the non-payment of rent, whether or not the defaults are cured, or (iv) if Tenant has committed any non-curable breach or is otherwise in default of any of the terms, covenants, and conditions of this Lease.

Any and all Options granted to Tenant, if any, are hereby prescribed as follows:

Provided Tenant is not in default or has not committed a default during the term of this Lease, Landlord hereby grants Tenant the right to extend the term of this Lease for two (2) additional periods of one (1) year each. In order to exercise such Options, Tenant must notify Landlord, in writing, no later than ninety (90) days prior to the expiration of the original or preceding term, of its intent to exercise this Option to Extend. Failure to notify Landlord as stipulated shall, at Landlord's discretion, automatically cancel Tenant's rights hereby granted under this Option. The monthly Base Rent for these Option periods granted herein, if exercised, shall be increased by three percent (3%) initially and annually thereafter over the preceding period.

#### 26. Damage or Destruction.

In the event the Premises sustains damages of less than fifty percent (50%) of its then replacement value, then Landlord shall repair such damage (except for Tenant's improvements, trade fixtures and equipment) as soon as reasonably possible, and this Lease shall continue in full force and effect, and Rent and other charges shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired. In the event such damages are uninsured, Landlord may elect not to restore and repair the Premises, in which case this Lease shall be terminated. In either case, if such damages or destruction was caused by a negligent or willful act of Tenant, then Tenant shall make all necessary repairs and restorations at its sole cost and expense and this Lease shall continue in full force and effect with no abatement of rent.

In the event the Premises sustains damages of more than fifty percent (50%) of its then replacement value, (unless caused by a negligent or willful act of Tenant in which case Tenant shall make all necessary repairs and restorations at its sole cost and expense and this Lease shall continue in full force and effect with no abatement of rent), this Lease shall terminate effective on the date of such damage or destruction.

#### 27. Eminent Domain.

Eminent domain proceedings resulting in the condemnation of part of the Premises herein that leave the remaining portion usable by Tenant for purposes of the business for which the Premises are leased will not terminate this Lease. If Tenant determines that the remaining portion is not reasonably usable, Tenant may terminate this Lease by giving written notice of termination to Landlord no more than ninety (90) days after the notice of condemnation or taking. The effect of such condemnation, should Tenant not terminate this Lease, will be to terminate this Lease as to the portion of the Premises condemned and leave it in effect as to the remainder of the Premises, and the Rent and all other expenses provided for herein shall be adjusted accordingly. Compensation awarded as a result of such condemnation shall belong to Landlord (including damages for the bonus value of Tenant's leasehold improvements), except to the extent that part of the award is allocated as damages to fixtures of the Depot which were furnished by Tenant, or expenses for Tenant's relocation.

#### 28. General Lease Terms:

**Severability.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

**Time of Essence.** Time is of the essence with respect to the obligations to be performed under this Lease.

**Additional Rent.** All monetary obligations of Tenant to Landlord under the terms of this Lease, including but not limited to Tenant's Share of Operating Expense Increase and any other expenses payable by Tenant

Initials: 

hereunder shall be deemed to be rent.

**Prior Agreements; Amendments.** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior or contemporaneous agreement or understanding pertaining to any such matter, including but not limited to Letters of Intent, Proposals to Lease, and other documentation associated with the negotiation of this tenancy, shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Tenant hereby acknowledges that no real estate broker on this transaction nor the Landlord or any employee or agents of any said persons has made any oral or written warranties or representations to Tenant relative to the condition or use by Tenant of the Premises or the Depot and Tenant acknowledges that Tenant assumes all responsibility regarding the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease, including but not limited to the Occupational Safety Health Act and the Americans with Disabilities Act ("ADA"); However, Tenant shall not be responsible for ADA and/or CAL OSHA related requirements which may or may not have been addressed prior to the initiation of this Lease.

**Notices.** Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery or by certified or registered mail, and shall be deemed sufficiently given if delivered or addressed to Tenant or to Landlord at the address noted in Section 1.17. Mailed notices shall be deemed given upon actual receipt at the address required, or forty-eight hours following deposit in the mail, postage prepaid, whichever first occurs. Either party may by notice to the other specify a different address for notice purposes. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord may from time to time hereafter designate by notice to Tenant.

**Waivers.** No waiver by Landlord or any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

**Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjusted that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as if it was not legally required to pay under the provisions of this Lease.

**Covenants and Conditions.** Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

**Binding Effect; Jurisdiction.** This Lease shall bind the parties, their personal representatives, successors, and assigns. This Lease shall be governed by the laws of the State where the Depot is located and any litigation concerning this Lease between the parties hereto shall be initiated in the county in which the Depot is located.

**Attorney's Fees.** If either party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, trial or appeal thereon, shall be entitled to his reasonable attorneys' fees to be paid by the losing party as fixed by the court in the same or a separate suit, and whether or not such action is pursued to decision or judgment. Landlord shall be entitled to reasonable attorneys' fees and all other costs and expenses incurred in the preparation and service of notice of default (including but not limited to notices required under the Unlawful Detainer statutes) and consultations in connection therewith, whether or not a legal transaction is subsequently commenced in connection with such default. The costs, salary and expenses of the City Attorney and members of his office in enforcing this contract on behalf of the City of San Bernardino shall be considered as "attorney's fees" for the purposes of this paragraph.

**Consents.** Wherever in this Lease the consent of one party is required to an act of the other party such consent shall not be unreasonably withheld or delayed.

**Guarantor.** In the event that there is a guarantor of this Lease, said guarantor shall have the same obligations as Tenant under this Lease.

**Authority.** The individuals executing this Lease on behalf of the Landlord represent and warrant to Tenant that they are fully authorized and legally capable of executing this Lease on behalf of Landlord and that such execution is binding upon all parties holding an ownership interest in the Depot. If Tenant is a corporation, trust, or general or limited partnership, Tenant, and each individual executing this Lease on behalf of such entity represent and warrant that such individual is duly authorized to execute and deliver this Lease on behalf of such entity.

**Conflict.** Any conflict between the printed provisions, Exhibits, or Addenda of this Lease and the typewritten or handwritten provisions, if any, shall be controlled by the typewritten or handwritten provisions.

**Multiple Parties.** If more than one person or entity is named as either Landlord or Tenant herein, except as otherwise expressly provided herein, the obligations of the Landlord or Tenant herein shall be the joint and several responsibility of all persons or entities named herein as such Landlord or Tenant, respectively.

## **ATTACHMENTS:**

Attached hereto are the following documents which constitute a part of this Lease:

Exhibit "A" - Rules and Regulations  
Exhibit "B" - [Intentionally omitted]  
Exhibit "C" - Site Plan

Initials: 

**ADDITIONAL TERMS:**

28. **Condition of Premises.** Tenant hereby accepts Premises in as-is condition, and any improvements or modifications to the Premises, if any, will be completed by Tenant at Tenant's sole cost and expense. Any improvement that would involve any structural modification or actual reconfiguration of the walls or ceiling must be approved by Landlord in advance. Any such work must be performed by a lawfully licensed and adequately insured contractor, and Tenant shall be required to obtain and comply with the necessary City permits.

LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

THIS LEASE HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE REAL ESTATE BROKERS, OR ANY OF THEIR AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO. THE PARTIES SHALL RELY SOLELY UPON THE ADVISE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

**Landlord:**

San Bernardino Associated Governments,  
a California joint powers agency (SANBAG)

**Tenant:**

Southern California Association of Governments  
(SCAG)

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

By:  \_\_\_\_\_

Executed on \_\_\_\_\_

Executed on 2-24-04

Initials  \_\_\_\_\_

## EXHIBIT "A" RULES AND REGULATIONS

### GENERAL RULES


1. Tenant shall not suffer or permit the obstruction of any Common Areas.
2. Landlord reserves the right to refuse access to any persons Landlord in good faith judges to be a threat to the safety, reputation, or property of the Depot or its occupants.
3. Tenant shall not make or permit any noise or odors that annoy or interfere with other Tenants or persons having business within the Depot.
4. Tenant shall not keep animals or birds within the Depot (unless a part of approved use as per Section 9 of this Lease), and shall not bring bicycles, motorcycles, or other vehicles into areas not designated as authorized for same.
5. Tenant shall not make, suffer, or permit litter except in appropriate receptacles for that purpose. All garbage and refuse shall be placed in containers designated for refuse collection, and such items must fit entirely within the receptacles. All large boxes and other refuse shall be broken down prior to placing in the containers. The outside areas immediately adjoining the Premises shall be kept clean and free from dirt and rubbish by Tenant to the satisfaction of Landlord.
6. Tenant shall not alter any exterior lock or install new or additional locks or bolts on exterior doors without providing Landlord copies of same.
7. Tenant shall not deface the walls, partitions, or other surfaces of the premises or the Depot.
8. Tenant shall not employ any service or contractor for services or work to be performed in the Building, except as approved by Landlord.
9. Tenant shall return all keys, including duplicates, at the termination of its tenancy and shall be responsible for the cost of replacing any keys that are lost.
10. No window coverings, shades, or awnings shall be installed or used by Tenant without Landlord's prior approval.
11. No Tenant, employee, or invitee shall go upon the roof of the Building without Landlord's prior approval.
12. Smoking shall be restricted to designated smoking areas, if any, and then not near, doors, windows, or other entrances, exits, or openings to other units within the Depot.
13. Tenant shall not install, maintain, or operate any vending machines upon the Premises without Landlord's written consent.
14. The premises shall not be used for lodging or manufacturing, cooking, or food preparation, except as an approved Use per Section 9 of this Lease.
15. Tenant shall comply with all safety, fire protection, and evacuation regulations established by Landlord or any applicable governmental agency.
16. Landlord reserves the right to waive any one of these rules or regulations, and/or as to any particular Tenant, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such Tenant.
17. Tenant assumes all risks from theft or vandalism and agrees to keep its Premises locked as may be required.
18. Landlord reserves the right to make such other reasonable rules and regulations as it may from time to time deem necessary for the appropriate operation and safety of the Depot and its occupants. Tenant agrees to abide by these and such rules and regulations.
19. Signs shall conform to sign criteria established by Landlord and shall not exceed the quantity or dimensions authorized by Landlord. No signs (other than signs that strictly conform to sign criteria), placards, pictures, advertisements, names, or notices shall be inscribed, displayed, painted, or affixed on or to any part of the outside or inside of the Building or within the Common Areas of the Depot. Landlord shall have the right to remove any such non-conforming signs without notice to Tenant, at the expense of Tenant.
20. Tenant shall not disturb, solicit, or canvass any other Tenant within the Depot.
21. Tenant, its contractors, employers, or invitees, shall not loiter in the Common Areas of the Depot or in any way obstruct the entrances and driveways.
22. No antenna, aerial, discs, satellite dishes, or other such device shall be erected on the roof or exterior walls of the Building without Landlord's express consent.

### PARKING RULES

1. Parking areas shall be used only for parking by vehicles no longer than full size, passenger automobiles, non-commercial pick-up trucks, and sport utility vehicles herein called "Permitted Size Vehicles". Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles".
2. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities.
3. Parking stickers or identification devices shall be the property of Landlord and be returned to Landlord by the holder thereof upon termination of the holder's parking privileges. Tenant will pay such replacement charge as is reasonably established by Landlord for the loss of such devices.
4. Landlord reserves the right to refuse the sale or issuance of identification devices to any person or entity that willfully refuses to comply with the applicable rules, regulations, laws, and/or agreements.
5. Landlord reserves the right to relocate all or a part of parking spaces, and to reasonably allocate them between compact and standard size spaces, as long as the same complies with applicable laws, ordinances, and regulations.
6. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.
7. Unless otherwise instructed, every person using the parking area is required to park and lock his own vehicle. Landlord will not be responsible for any damage to vehicles, injury to persons, or loss of property, all of which risks are assumed by the party using the parking area. No overnight parking shall be permitted.
8. The maintenance, washing, waxing, or cleaning of vehicles in the parking structure or Common Areas is prohibited.
9. Tenant shall be responsible for seeing that all of its employees, agents, and invitees comply with the applicable parking rules, regulations, laws, and agreements.
10. Landlord reserves the right to modify these rules and/or adopt such other reasonable and non-discriminatory rules and regulations as it may deem necessary for the proper operation of the parking area.
11. Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby.
12. Violation of any of the parking rules or regulations may result, without notice, in the towing of any of Tenant's vehicles (or Tenant's employees, invitees, contractors, or visitors), the cost of which (including impound fees) shall be the sole responsibility of Tenant.

Initials: 

**EXHIBIT "B"**  
**[intentionally omitted]**

Initials:  \_\_\_\_\_  
\_\_\_\_\_



# EXHIBIT "C"

## Site Plan

